



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,211	04/09/2001	Hideshi Fujiwake	P107331-00009	3660

23353 7590 03/25/2003

RADER FISHMAN & GRAUER PLLC  
LION BUILDING  
1233 20TH STREET N.W., SUITE 501  
WASHINGTON, DC 20036

EXAMINER
----------

TUNG, JOYCE

ART UNIT	PAPER NUMBER
----------	--------------

1637

DATE MAILED: 03/25/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No. <b>09/828,211</b>	Applicant(s) <b>Fujiwake et al.</b>
	Examiner <b>Joyce Tung</b>	Art Unit <b>1637</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Feb 24, 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

a)  The period for reply expires 1 months from the mailing date of the final rejection.

b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_ . Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2.  The proposed amendment(s) will not be entered because:

(a)  they raise new issues that would require further consideration and/or search (see NOTE below);

(b)  they raise the issue of new matter (see NOTE below);

(c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3.  Applicant's reply has overcome the following rejection(s):  
\_\_\_\_\_  
\_\_\_\_\_

4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5.  The a)  affidavit, b)  exhibit, or c)  request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
Please see the attached.  
\_\_\_\_\_

6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7.  For purposes of Appeal, the proposed amendment(s) a)  will not be entered or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: claims 1-6 \_\_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_

8.  The proposed drawing correction filed on \_\_\_\_\_ is a)  approved or b)  disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.

10.  Other: \_\_\_\_\_

Art Unit: 1637

1. Claims 1-6 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Oefner et al. (5,795,976) in view of Schultz et al. (6,268,146).

The response argues that Oefner et al. fail to teach the limitations in claim 1 where “a plurality of inspected sites to be subjected to inspection of mutation in the base sequence with a plurality of types of oligonucleotides...”. However, Schultz et al. disclose the method involves a plurality of different nucleic acid probes, preferably after amplification of the multiple nucleic acid targets (See column 15, lines 1-5 and 30-35, and column 15, lines 58-63). The probes are labeled with fluorescence (See column 18, lines 25-42) in which different fluorescent labels are used (See column 18, lines 52-60). disclose multiple mismatches detection.

The response argues that in the first embodiment of Schultz et al., the method is for determining the presence or absence of a predetermined nucleic acid target sequence in a nucleic acid sample (See column 5, lines 42 to column 6, line 9, column 11 line 38 to column 12 line 9). However, the teachings of the predetermined nucleic acid target sequence are not in the claim.

The response further argues that in the second embodiment of Schultz et al., the method is for determining the presence or absence of a mismatch at the 3' terminal nucleotide in a nucleic acid hybrid formed by the hybridization of a predetermined nucleic acid target sequence with a nucleic acid probe and the second embodiment is concerned with the degree of hybridization or the degree of complementary. The teachings of the second embodiment are also not in the claim, for example, the 3' terminal region of the probes includes an identifier nucleotide and hybridizes with partial or total complementarity to the nucleic acid target sequence of the sample.

Art Unit: 1637

Therefore, the limitation as discussed above are ~~not~~ in the claim language and the rejection is  
A maintained.

2. Any inquiries concerning this communication or earlier communications from the examiner should be directed to Joyce Tung whose telephone number is (703) 305-7112. The examiner can normally be reached on Monday-Friday from 8:00 AM-4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached at (703) 308-1119 on Monday-Friday from 10:00 AM-6:00 PM.

Any inquiries of a general nature or relating to the status of this application should be directed to the Chemical/Matrix receptionist whose telephone number is (703) 308-0196.

3. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Art Unit 1637 via the PTO Fax Center located in Crystal Mall 1 using (703) 305-3014 or 308-4242. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

Joyce Tung

3-13  
March 13, 2003

*Jeffrey Siew*  
JEFFREY SIEW  
PRIMARY EXAMINER  
3/11/03